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VIA EMAIL & FEDERAL EXPRESS

May 12, 2014

Jim Collins, Esq.
Assistant Regional Counsel
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne St.
San Francisco, CA 94105

Re: Jervis B. Webb Co. Superfund Site, South Gate, CA

Dear Mr. Collins,

On behalf of the Jervis B. Webb Company ("JBW"), we are writing in response to an issue you raised at our April 7, 2014 meeting with yourself and Lori Jonas of the U.S. Department of Justice at your office in San Francisco, regarding the "Jervis B. Webb Company Superfund Site" (the "Site" or the "Property"). Specifically, you asserted the Jervis B. Webb Company of California ("Webb California") fraudulently transferred assets to JBW in violation of the Federal Debt Collection Procedures Act ("FDCPA") prior to its dissolution in 2003. Given the EPA's long history with the Site, we were surprised to hear this theory for the first time in April 2014. We have reviewed the FDCPA and have concluded that there is no basis either for liability under the FDCPA or to void the transfer of Webb California's only remaining asset, cash in the amount of $2,760,870.33, which it paid as a dividend to its sole shareholder JBW upon dissolution.[1] Furthermore, regardless of whether the Federal Government ever had a claim under the FDCPA, any such claim has extinguished by operation of law. A summary of our findings follows.

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[1] During our meeting, you also raised a question regarding approximately $2.6 million that Webb California "transferred" in 1997. That figure actually represents the total paid by Webb California in 1997 to reconcile its trade accounts with other JBW-affiliated entities. These trade accounts, which represent obligations incurred during the operation of the company (e.g. when Webb California purchased parts from the Jervis B. Webb Company of Georgia or Ann Arbor Computer, for example), were paid from the JBW centralized cash management account. As we have previously explained, beginning in 1994, JBW maintained a centralized account for itself and its affiliates, consistent with accepted accounting practices. The approximately $2.6 million referenced was fully documented and accounted for in the corporate financial records for each of the respective companies. We also note that the $2.6 million used to reconcile these trade accounts was not paid or transferred to JBW. For these reasons, it is not appropriate to discuss these transactions in the context of the FDCPA response we are providing in this letter on behalf of JBW. We are happy to make the JBW Controller available to provide additional details on these transactions to yourself or technical staff at EPA.

Webb California's Payment of a Dividend to JBW at Dissolution Did Not Constitute a "Fraudulent Transfer" Pursuant to the FDCPA

The FDCPA provides the "exclusive civil procedures for the United States to ... (1) recover a judgment on a debt; or (2) to obtain before judgment on a claim for a debt, a remedy in connection with such claim." 28 U.S.C. § 3001. While not entirely clear to us from our April 7, 2014 meeting, based on the statements made by both yourself and Ms. Collins, it appears EPA is alleging that transfers from Webb California to JBW were fraudulent under FDCPA section 3304(b)(1)(B)(ii).[2] This provision of the FDCPA applies to transfers made before or after a "debt" arises, if the debtor makes the transfer "without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor ... intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due." 28 U.S.C. § 3304(b)(1)(B)(ii). In this instance, it is clear that Webb California acted reasonably in all instances and that it had no reason to believe that its transfer of assets to its shareholder consistent with California corporation law would impact its ability to pay a debt to the Federal Government.

Webb California Acted Reasonably in Concluding it Owed no Debt to the Federal Government when it Dissolved

In order to dissolve a corporation, California law requires that the directors certify that a corporation's "known debts and liabilities have been actually paid, or adequately provided for, or paid or adequately provided for as far as its assets permitted." Cal. Corp. Code § 1905. Thus, a corporation need only provide for debts and liabilities to the extent such liabilities are known. Upon making provision for those known claims, corporations may voluntarily dissolve and distribute assets. Cal. Corp. Code §§ 1905, 2004. As required by Cal. Corp. Code § 2004, prior to dissolution, Webb California determined that "the corporation's known debts and liabilities have actually been paid" and filed a Certificate of Dissolution with the State certifying the same. See WCAL-01745. It was only after determining that Webb California's debts and liabilities had been paid or provided for during wind up, did the Director distribute all the remaining corporate assets to JBW as shareholder. The only remaining asset was cash in the amount of $2,760,870.33, which was properly issued as a dividend to the sole shareholder JBW in December 2003.

At our meeting, you indicated that because there was known groundwater contamination at the Site at the time of dissolution, Webb California should have known that it owed a debt to the Federal Government under CERCLA. At the outset, this position is unreasonable and contrary to public policy. While EPA was active for many years with the adjacent Cooper Drum Superfund

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[2] You made clear that EPA is not alleging that Webb California dissolved with the actual intent to avoid CERCLA liability. As manifested in the record, in light of a deteriorating business climate, in 1995 the Webb California Board of Directors decided to end business operations. See Declaration of John Marshman at ¶ 19. Manufacturing activity ceased in early 1996 and by October 1996, all Webb California employees were terminated and the Webb California Board of Directors began the process of winding up of company. *Id.*; see also Webb California Board of Directors Meeting Minutes and Certain Board Transactions (1949 – 2003) (provided to EPA in the 104e Response).

Site and well aware of the Webb California environmental posture, at the time of dissolution, EPA had not proposed the Site for listing on the National Priorities List, nor had it sent any 104(e) requests to Webb California. Webb California did not receive a general notice letter, special notice letter, or any other communication from EPA that indicated EPA considered Webb California to be a responsible party for groundwater contamination at the Site. To assert now, over 10 years later, that Webb California at the time it dissolved pursuant to California law should have known that one day the Federal Government *may* list the Site, *may* incur response costs, and *may* seek those responses costs from Webb California is unreasonable.

The reasonableness of Webb California's position is further supported by the fact that Webb California was dealing with a responsible regulatory agency for onsite contamination at the time, and that regulatory agency never required Webb California to undertake groundwater remediation. As we have previously explained, in conjunction with selling the Site, in October 1997, Webb California completed 14 soil borings in the area of the Site near a former concrete clarifier and detected volatile organic compounds ("VOCs") such as trichloroethylene (TCE), tetrachloroethylene (PCE), and hexavalent chromium. In 1999, the clarifier was removed from the property and four soil vapor extraction wells were installed to extract and treat VOCs in soil vapor beneath the property in the area of the former concrete clarifier. After operating the soil vapor extraction system for approximately 19 months, in October 2001, Webb California submitted a Soil Closure Report requesting no further action ("NFA") for the Site to the Los Angeles Regional Water Quality Control Board ("Regional Board"). In January 2002, the Regional Board concurred with the NFA for soil at the property with the stipulation that Webb California continue groundwater monitoring. The Regional Board granted the NFA and did not require any groundwater remediation based on a soil closure report that determined, *inter alia*, that TCE and PCE in the soil would not adversely impact groundwater quality. Subsequent monitoring reports submitted to the Regional Board concluded that "The presence of elevated concentrations of VOCs in upgradient well MW-2 suggests that VOCs are migrating on-site from a hydraulically upgradient off-site source." Annual Groundwater Sampling Report – June 2005 – 5030 Firestone Boulevard and 9301 Rayo Avenue South Gate, California (submitted to Los Angeles Regional Water Quality Control Board by Brown & Caldwell).

The fact that EPA, 8 years after Webb California's dissolution (and for the first time by any regulatory agency to our knowledge) concluded that releases from the Site contributed to groundwater contamination does not diminish the reasonableness of Webb California's actions at the time of the transfer. Webb California obtained an NFA for soils and provided extensive evidence that soil contamination from the Site was not the cause of or contributing to underlying groundwater contamination. These facts alone provide a strong basis for reasonableness because, if groundwater contamination was only migrating under the Property from off-site, Webb California would have had a strong argument that it was not an owner or operator of a contaminated property under CERCLA based on the Small Business Liability Relief and Brownfields Act (signed into law on January 11, 2002). As you know, this law codified prior EPA guidance and provides that a person who owns real property that is or may be contaminated by a release from contiguous or "otherwise similarly situated" property not owned by that person, will not be liable under CERCLA solely by reason of the contamination if the person demonstrates certain factors, including, importantly, that the person did not cause, contribute or

consent to the release or threatened release. See 42 U.S.C. § 9607(q)(1)(A). Later EPA guidance confirmed that a landowner is protected by the exemption even if the property is not immediately adjacent to the source of contamination. *See* EPA Interim Enforcement Discretion Guidance Regarding Contiguous Property Owners ("Contiguous Property Owner Guidance") (Jan. 13, 2004).

Again, as mentioned by Ms. Jonas and expressly stated in the statute, the FDCPA looks to reasonableness of a transfer in light of a debt. Based on the circumstances at they existed at the time of dissolution and transfer, Webb California clearly was reasonable in concluding that it did not have any current or future debt to the Federal Government.

Even if Webb California Owed a Debt, it was Reasonable to Conclude it Could Pay that Debt

The FDCPA deems a transfer fraudulent if the transferor believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due. 8 U.S.C. § 3304(b)(1)(B)(ii). In this case, even if Webb California reasonably should have concluded it had or could incur a CERCLA debt to the Federal Government, it made reasonable accommodations to pay that debt, which would defeat any FDCPA fraudulent transfer claim. Specifically, prior to dissolution, and while not required to do so under California law, Webb California had effectively provided for any environmental liabilities associated with the Site (including a debt under CERCLA) by entering into indemnification agreements with the purchasers of the two properties that comprised the Site. Generally, if the corporation's business or assets are sold to a responsible purchaser who assumes its liabilities as part of the purchase price, the debts are usually deemed "adequately" provided for. See Cal. Prac. Guide Corps. Ch. 8-E, "Dissolution and Liquidation." In this case, the purchasers "assumed" any environmental liability associated with the Site by purchasing the properties subject to an environmental indemnification in favor of Webb California. Therefore, Webb California properly distributed the dividend to its shareholder, as Webb California could reasonably conclude that it would not incur a debt it could not provide for following the transfer.

Any Action Under the FDCPA Has Extinguished as a Matter of Law

Again, based on the statements made by both yourself and Ms. Collins related to what Webb California should have known based on groundwater contamination onsite at the time of the dividend transfer to JBW, it appears EPA is alleging that transfers from Webb California to JBW were fraudulent under 28 U.S.C. § 3304(b)(1)(B)(ii). Under the applicable statute of limitations, "[A] claim for relief with respect to a fraudulent transfer or obligation under this subchapter [28 USCS §§ 3301 et seq.] is extinguished unless action is brought ... under subsection (a)(1) or (b)(1)(B) of section 3304 [28 USCS § 3304] within 6 years after the transfer was made or the obligation was incurred ..." 28 U.S.C. § 3306(b)(2). Here the transfer occurred in December 2003, and as such, any claim has been extinguished.[3]

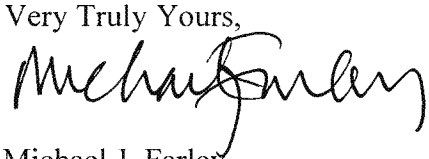
[3] Although EPA not is alleging that Webb California made the transfer "with actual intent to hinder, delay, or defraud" the Federal Government, if EPA were making such an allegation, any claim under the applicable

Conclusion

For the reasons previously outlined to EPA in prior communications and summarized in this letter, JBW is not a potentially responsible party and has no liability for any alleged contamination related to the Site under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675 (known as "CERCLA" or "Superfund"). Additionally, contrary to your allegations at our April 7, 2014 meeting, for the reasons discussed above, the transfer made to JBW as the sole shareholder at the time of Webb California's is not voidable under the FDCPA.

JBW has made every effort to be responsive to EPA's inquiries, but would appreciate finality in this matter so that the company may focus fully on its business. Please let me know if you would like to discuss our position in this letter and any next steps in the resolution of this matter. I can be reached via telephone at 248-489-5677 or email at mfarley@jerviswebb.com.

Very Truly Yours,



Michael J. Farley
General Counsel
Jervis B. Webb Company

cc: Lori Jonas, United States Department of Justice
Michael Scott Feeley, Esq., Latham & Watkins LLP

FDCPA provision 3304(b)(1)(A) will have similarly extinguished. Under the applicable statute of limitations, if the claim is not brought within six years after the transfer, it must be brought within two years after the transfer was or could reasonably have been discovered by the claimant. 28 U.S.C. §3306(b)(1). In 2008, EPA was expressly made aware that Webb California was dissolved in 2003. *See* attached October 22, 2008 Email from Eric Yunker, U.S. EPA, to Michel Iskarous, California Department of Toxic Substances Control, re "Jervis Webb Phone call record." Any transfer should have reasonably been discovered two years after this actual notice of dissolution, which, under state law, requires the distribution of all remaining assets. *See* Cal. Corp. Code § 2004.